

APPEAL NO. 050067
FILED MARCH 1, 2005

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 14, 2004. The hearing officer resolved the disputed issues by deciding that the employer did not tender a bona fide offer of employment (BFOE) to the respondent (claimant), and that the claimant has had disability from June 25, 2004, through the date of the CCH. The appellant (self-insured) appealed, disputing both the BFOE and disability determinations. The appeal file did not contain a response from the claimant.

DECISION

A timely appeal not having been filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

The self-insured does not allege in its appeal the date of its receipt of the Decision and Order of the hearing officer. Records of the Texas Workers' Compensation Commission (Commission) show that the decision of the hearing officer was distributed to the parties on December 21, 2004, and signed for by the carrier's (city) representative on December 22, 2004. Under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 156.1(a) (Rule 156.1(a)), each carrier shall designate an (city) representative to act as an agent for receiving notice from the Commission, and, under Rule 156.1(c), notice to the carrier's (city) representative is notice from the Commission to the carrier. Therefore, the self-insured received the decision of the hearing officer on December 22, 2004, when its (city) representative received it.

Pursuant to Section 410.202 and Rule 143.3(e), an appeal, to be timely, must be filed or mailed not later than the 15th day after the date of receipt of the hearing officer's decision. Thus, the last date for the self-insured to timely file an appeal would be Thursday, January 13, 2005. The self-insured's appeal is dated January 14, 2005, and was received by the Commission on January 14, 2005. The appeal, having been filed after January 13, 2005, was thus untimely.

The appeal being untimely, the jurisdiction of the Appeals Panel was not properly invoked and the decision and order of the hearing officer have become final under Section 410.169.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

**U.S. CORPORATE SERVICES
800 BRAZOS STREET
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

CONCURRING OPINION:

I concur with the decision that the self-insured's appeal was not timely filed, but want to reference the deemed receipt rules. Rule 102.5(d) provides in pertinent part that for purposes of determining the date of receipt for those written communications sent by the Commission which require the recipient to perform an action by a specific date after receipt, unless the great weight of evidence indicates otherwise, the Commission shall deem the received date to be the first working day after the date the written communication was placed in a carrier's (city) representative's box located at the Commission's main office in (city) as indicated by the Commission's date stamp. See *also* Rule 143.3(d)(2) regarding deemed receipt of the hearing officer's decision the first working day after the date the written communication was placed in the carrier's (city) representative's box, unless the great weight of evidence indicates otherwise.

A date stamp on the cover letter to the hearing officer's decision reflects that it was placed in the self-insured's (city) representative's box on December 21, 2004. The first working day after December 21, 2004, was Wednesday, December 22, 2004. The deemed date of receipt was December 22, 2004. The 15th day after December 22, 2004, excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code, was Thursday, January 13, 2005. The self-insured's appeal is dated January 14, 2005, and was hand delivered to the Commission on that date. Because the self-insured's appeal was filed after January 13, 2005, it was not timely filed with the Commission. The self-insured's appeal would also be untimely filed if the 15-day time period were calculated from the date the self-insured's (city) representative provided a signed acknowledgment of receipt on December 22, 2004 (which was the

first working day after the hearing officer's decision was placed in the self-insured's (city) representative's box).

Robert W. Potts
Appeals Judge